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PRESENTE:

Online gaming : European Court of Justice will rule again in a Gambelli-bis case

19 Janvier 2005

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Within a year following the landmark European Gambelli decision, a new remote gaming case is pending before the European Court of Justice (ECJ). While the final decision in the Gambelli case is still pending before the national court, national authorities in various Member States had to judge on the de facto consistency of the national gaming policy and its compatibility with European law. After one year, the Gambelli and Lindman requirements are applied in a very diverging manner. In the Betfair appeal case, it was even insinuated that Gambelli was not relevant!

In Sweden, Belgium, Italy and Germany the Supreme and Constitutional courts were called upon to deliver their views. In contrast to the Swedish Administrative Supreme Court (Regeringsrättens), the German Bundesgerichtshof (BGH) held that the editor of an online newspaper could not be held liable for inserting a link to an Austrian licensed bookmaker. Furthermore, the BGH explicitly questioned whether the current German gaming policy could be reconciled with the requirements of European law.

In the Netherlands the situation is more confusing. While in summary proceedings, the initial decisions - upholding the gaming restrictions - were confirmed, the situation in the main proceedings is different. In its interlocutory judgement of 2 June 2004, the lower court of Arnhem requested a proof of a consistent gaming policy. A final decision in the main proceedings is expected for March 2005.

In Italy, the Supreme Court's April 2004 ruling in "Bruno Corsi"-case went directly against the European Courts' Gambelli decision. Seen this manifest contradiction between the ECJ case-law and the Supreme Court's decision, the Tribunale di Larino, referred the case to the European Court of Justice. In an identical case as the Gambelli case, the Larino District Court, questions whether the Italian gaming restrictions can be reconciled with the European Internal Market Principles. In its referral, the national court underlines the difference between the interpretation emerging from the decisions of the European Court of Justice, notably the Gambelli judgment, and the jurisprudence of the Corte Suprema di Cassazione.

With the new Placanica case pending before the European Court, 2005 seems to become a very important year for the remote gaming industry. Not only is there the European

Commission's study on gambling, the second review of the electronic commerce Directive, but also the famous Service Directive will be debated in the European Parliament. Both the Directive on electronic commerce and the proposal for a Service Directive contain the Internal Market principle. According to this principle, a gaming operator should only comply with the law of its Country of Origin and cannot be submitted to additional requirements for the cross-border provision and promotion of its services.

The inclusion of this principle in the Service and Electronic Commerce Directives will be an important step towards a united European remote gaming market. Eventually, one may not forget that it is very likely that regulatory models adopted by the United Kingdom, Malta and Slovakia will lead to serious Internal Market distortions, underlying the need of a European initiative in the field of remote gaming services.

More info ?

The reference for preliminary ruling of the Tribunale di Larino in the Placanica case [available on this site](#).

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